

Exemption No. 7763

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056**

In the matter of the petition of

Boeing Commercial Airplane Group

for an exemption from § 21.191(f)
of Title 14, Code of Federal Regulations

Regulatory Docket No. FAA-2002-12059

GRANT OF EXEMPTION

By letter #6-1031-GQA-MRM02-190, dated April 3, 2002, Mr. Scott G. Peterson, Director, Boeing Commercial Airplane Group, Regulatory Administration, P.O Box 3707, Seattle, Washington 98124-2207, petitioned for a one time exemption from the Experimental Certificate, Market Survey Category requirements of § 21.191(f) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow for carriage of persons involved in airplane sales and marketing that is not allowed under current interpretations of the rule on one Boeing Model 737-990 airplane, serial number 30017.

The petitioner requests relief from the following regulations:

Section 21.191(f) states that an Experimental certificate is issued for use of aircraft for purposes of conducting market surveys, sales demonstrations, and customer crew training only as provided in § 21.195.

ANM-02-357-E

The petitioner supports its request with the following information:

Section 21.195(a) states that a manufacturer of aircraft manufactured within the United States may apply for an experimental certificate for an aircraft that is to be used for market surveys, sales demonstrations or customer crew training. Paragraphs (b) and (c) of this section are not relevant to this petition. Paragraph (d) of this section requires the applicant for an experimental certificate for these purposes to establish an inspection and maintenance program for the continued airworthiness of the aircraft and show that it has been flown for a specific number of hours.

Section 91.319(a)(1) states that no person may operate an aircraft that has an experimental certificate for other than the purpose for which the certificate was issued.

The petitioner's supportive information is as follows:

"The Boeing Company hereby requests an exemption from 14 FAR 21.191(f) to allow it to carry persons involved in airplane sales and marketing not allowed under current interpretations of this rule

"We propose the exemption to read:

"The Boeing Company is hereby granted an exemption from 14 FAR 21.191(f) to allow carriage of persons involved in sales and marketing of transport category airplanes on a Boeing Model 737-990, airplane serial number 30017, registration N737X, tab number YD501, while this airplane meets the operational and safety requirements of 14 FAR 91."

The rationale for this petition is as follows:

Boeing is currently planning to carry approximately 12-14 news media personnel and their video camera crew, aviation print media reporters, vendor technical experts and other Boeing public relations personnel, on a Boeing Model 737, airplane serial number 30017, registration N737X. These local flights within the Washington state area and adjacent coastal waters are scheduled on or about April 24, 2002. This demonstration trip will provide an excellent opportunity to showcase American aerospace products to potential customers and promote aviation's newest technology.

"We believe that FAR 21.191(f) should be interpreted to allow a properly equipped 737 to carry anyone on this trip who may enhance our ability to sell airplanes. This would include the direct customers, their advisors and financial backers, the government regulators and administrators of the U.S. and customer nations, our vendors and risk sharing partners, members of the press and media, sales and marketing personnel and airplane support personnel."

"We note that current interpretation of 14 FAR 21.191(f) already includes direct customers with no requirement other than that the airplane have either 50 flight hours if a new type design or 5 hours if a modified type design.

"In the interest of public safety, we believe it is prudent to add stipulations that the airplane to be used under this exemption also:

"1. Be a transport category airplane, governed by adequate flight manual equivalent information, including Minimum Equipment List (MEL),

"2. Be properly equipped with operational equipment in compliance with FAR 91 (and ICAO requirements as appropriate), i.e. navigation, communication, etc., and

"3. Be properly equipped with passenger safety equipment in compliance with FAR 91 (and ICAO requirements as appropriate), i.e. oxygen, seats, passenger address, emergency egress provisions, etc.

"With these stipulations, we believe public safety is properly addressed.

"Granting this exemption will be in the public interest by enabling us to be more competitive in the global marketplace."

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because the exemption, if granted, would not set a precedent, and any delay in acting on this petition would be detrimental to Boeing Commercial Airplane Group.

The FAA's analysis/summary is as follows:

Part 21 of Title 14, Code of Federal Regulations (14 CFR) § 21.191(f) for market survey does not permit an experimental certificate to be issued for the purpose of conducting a transportation flight for the news media and camera crew, vendors, and public relations personnel, under which the Boeing model 737 airplane is currently certificated. Further, there does not appear to be any Experimental category that would accommodate this type of operation.

The airplane is certificated under a Special Airworthiness Certificate, Experimental category, for the purposes of R & D (research and development), Show Compliance to the Regulations, and Market Survey. One of the operating limitations issued for this airplane states, "No person may be carried in this aircraft during flight unless that person is required for the purpose of the flight." News media personnel are not required for the purpose of the flight nor could they be carried under any of the purposes assigned to this airplane.

The FAA Type Certificate Number TC A16WE was issued on April 17, 2001, to the Boeing Company for the Boeing Model 737-900 series. Therefore, an airplane that conforms to the approved type design is eligible for a Standard Airworthiness Certificate. The proposed flight could be conducted in an airplane with a Standard Airworthiness Certificate.

The Boeing 737-990, serial number 30017, is not presently eligible for a Standard Airworthiness Certificate because it does not conform to the Type Certificate in the areas of added flight test instrumentation, flight test wiring, flight test support equipment, red label and restricted use parts (some hardware or software configuration modifications are not approved), and interior differences. This airplane could be reconfigured to meet the Type Certificate and the issuance of a Standard Airworthiness Certificate by removing the above differences and refurbishing the airplane with all approved production parts per type design. At this time, the changes are not considered to be necessary or appropriate due to the flight test schedule time constraints, relatively minor differences, and the fact that the changes do not affect the major flight characteristics or operating systems of the airplane.

These flights are currently scheduled on or about April 24, 2002, weather permitting. The petitioner requests waiver of the requirement for submittal of petition for exemption at least 120 days before the proposed effective date of the exemption as stated in § 11.63. It is furthermore requested that the publication and comment procedures of § 11.87 be waived, to expedite granting of the one time exemption.

Granting the petitioner's request would not adversely affect safety because this exemption: (1) is for one time only, and (2) is in a configuration that is not significantly different from the production airplane. Boeing has operated and maintained the airplane per the established flight and maintenance manuals. The airplane proposed for these flights has accumulated 764 flight hours of the Boeing flight test program. The Boeing 737-990 airplane will be eventually delivered for revenue service with Alaska Airlines.

The FAA finds that granting this exemption is in the public interest because it will enable Boeing to compete more effectively with foreign competitors, increase foreign sales of Boeing airplanes and therefore, create more airplane production jobs within the United States.

The FAA finds, for good cause, that action on this petition should not be delayed by publication and comment procedures for the following reasons: (1) the grant is for a one time exemption from a requirement, and not permanent relief from a requirement, and (2) such a delay would cause cancellation of the flight for which the exemption is sought.

In consideration of the foregoing, I find that a grant of exemption is in the public interest, and will not significantly affect the level of safety provided by the regulations. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, Boeing Commercial Airplane Group is granted an exemption from 14 CFR part 21, § 21.191(f), on one Boeing Model 737-990 airplane, serial number 30017. This exemption expires on April 28, 2002.

Issued in Renton, Washington, on April 19, 2002

/s/ Lirio Liu Nelson
Lirio Liu Nelson
Acting Manager
Transport Airplane Directorate
Aircraft Certification Service